the gaps that would otherwise be left by commercial networks. For example, more schools have been wired pursuant to cable franchises than by telephone companies.[98] Similarly, institutional networks make feasible the dissemination of computerized information by local governments to citizens. Thus, the in-kind compensation agreed to in cable franchises helps serve the purposes of the Act.[99]

The total compensation cable operators pay for use of the local public rights-of-way, then, consists of both franchise fees and the additional types of compensation described above. Thus, cable franchise fee payments alone do not represent the full market value of the compensations for use of local rights-of-way that a cable operator pays to a local government. Thus, a "fee in lieu of" of a franchise fee that equals the cable franchise fee alone (much less "a fee in lieu of" that is less than a cable franchise fee), would fall short of the fair market value of the local public rights-of-way in any particular jurisdiction.

Unless the Commission interprets the "fees in lieu of" provision to include compensation over and above cable franchise fees, that provision in the Act fails to provide full compensation to a local government for an OVS operator's use of local rights-of-way. It is therefore insufficient to validate

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[98] See Appendix A at p. 31 & n.38.

[99] See, e.g., 1996 Act, sections 706-708 (incentives to promote advanced telecommunications services to schools in particular).

any taking of the local government's property rights by OVS operators under color of Commission rules.

### C. LECs' Existing Authorizations to Use Local Rights-of-Way to Provide Local Telephone Service do not Extend to OVS.

LECs will no doubt argue, as they did in the video dialtone proceedings, that even though a LEC needs local permission to use the local public rights-of-way, a LEC that is currently using those rights-of-way to provide telephone service needs no additional permission to build an OVS system and provide OVS service. This is incorrect. OVS falls far outside the scope of any pre-existing authority granted to LECs.

Grants made to LECs in the past gave them only the authority to use the rights-of-way to build and operate a local telephone network to provide telephone service subject to state law definitions of telephone service and subject to Title II of the Communications Act. But the 1996 Act specifies that an OVS is not a telephone network subject to Title II.[100] And the new creature called OVS certainly does not fall within the scope of the "telephone service" for which LECs were granted authority to use local rights-of-way by local governments or states decades ago. Thus, no past grant of authority to a LEC could be construed to include a right to use the rights-of-way for OVS, which is not telephone service and which did not exist at the time of such grants.

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[100] See 1996 Act, section 302(a) (adding new §§ 651(b), 653(c)(3)).

Because an OVS is not subject to Title II, it cannot be considered part of the original regulatory arrangement — an implicit or explicit contract with the public — that a LEC made with state and local governments and that was subject to corresponding state regulation. Any prior grants to LECs were made to public utilities subject to comprehensive state and local price and service quality regulation, which required universal service under established regulatory structures. It appears, however, that an OVS will use the public rights-of-way on a non-utility basis, free from the comprehensive state and local price and service quality regulation and universal service requirements that were part of the LEC's original compact to use local rights-of-way. Thus, any ancient telephone right-of-way grant will not apply to OVS usage.

There are additional policy reasons not to construe any pre-existing LEC right-of-way grant to include authority to provide OVS. Unlike the case with traditional telephone service, the consumers of OVS services will not be synonymous with the taxpayer public in general, because some taxpayers will subscribe to OVS while others will not. Thus, taxpayers as a whole should not be required to subsidize OVS, though the grant of below-market access to taxpayer-funded local rights-of-way. An OVS operator should therefore have to make new arrangements with the local government to provide fair compensation for the crucial resource — the local rights of way — that the community is contributing to the OVS operator's new business. This

compensation represents a user fee charged directly against the entities that make a profit from using the rights-of-way, rather than the taxpayer subsidy that would result if an OVS operator did not pay just compensation.[101]

### D. An OVS certification must demonstrate that the operator has obtained local authority to use the public rights-of-way.

To avoid a takings problem, a prospective OVS operator must be required to demonstrate that it has obtained the authorizations necessary under state and local law to use local public rights-of-way for OVS. The conditions laid down by the Act, however, require that this be done in the LEC's initial certification filed with the Commission. This is because the statutory ten-day certification requirement precludes any more than a facial review by the Commission. Moreover, although the statute does require public notice when the Commission receives a certification, the ten-day time period effectively precludes any meaningful opportunity for interested parties to comment on or oppose the certification filing — for example, by informing the Commission that the OVS applicant has <u>not</u> obtained the necessary local right-of-way authorizations.

Consequently, the Commission cannot assume that affected parties will bring any problems to the Commission's attention: they will not have time. Indeed, unless the Commission's rules

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[101] The commenters endorse the comments of the City of Dallas, Texas, et al., on this issue.

provide clear and immediate notice to all affected parties, they may not even know that such a filing has been made.

For this reason, FCC rules must require the OVS operator's application to prove that it has done all of its homework beforehand. Since, as noted above, the Act does not give the FCC authority to infringe on local government control over local rights-of-way, the Act must be construed to require an OVS operator to obtain authority from the local right-of-way owner as a pre-condition to certification (or at least as a pre-condition to constructing and operating an OVS).

The Commission's requirements for the OVS certification must therefore ensure that OVS operator clearly and unmistakably demonstrates, on the face of its filing, that it has obtained all the necessary approvals and authority to use local rights-of-way. The certification must include incontestable evidence of specific authorization from each affected local government to use its public rights-of-way for OVS purposes — either in the form of attached licenses or franchises from each local community, or through written certifications by each affected community that such authority has been granted.[102]

If a prospective OVS operator were to obtain Commission approval without obtaining the necessary local authorizations, and the operator were to proceed to invade the public rights-of-way under color of a claim to Commission authorization, then the Commission and the federal government would be subject to an

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[102] NPRM ¶ 69.

immediate takings claim.[103] To avoid subjecting the federal government to such major fiscal liabilities, not to mention extensive litigation, the Commission's OVS rules should not allow OVS operators to certify without clear local authorization.

Any other approach would not only impose unnecessary costs on federal and local taxpayers and the Commission, but would also unduly delay the entire OVS experiment. For this reason, the NPRM's proposal (at ¶ 68) for facial approval subject to later review is unacceptable. Such a rule would encourage LECs to file OVS certifications and then, on the strength of an incompletely informed Commission approval, seek to circumvent local authorities altogether: either by beginning to build OVS systems without authorization, forcing local governments to sue the LECs (and the Commission) to preserve their rights, or by claiming that local governments cannot reject the OVS operator's intrusion where the Commission has given its blessing. The only way to avoid such a labyrinth of litigation is to require that the OVS applicant have its ducks in a row before filing for certification — that is, by requiring unmistakable evidence of local consent to accompany the certification itself.

As noted in Section III.C above, the OVS operator also should be required to show in its certification application that it has met PEG and other local requirements. The local authorization attached to the operator's certification can thus do double duty by satisfying the PEG criterion as well. The

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[103] See section V.A.3.a supra.

operator should be able to show that it will meet each applicable PEG requirement through a similar showing of local approval, since the affected local governments are the only ones who will be in a position to verify that the OVS operator will match the PEG obligations of the incumbent local cable operator.

Requiring OVS applicants to make the necessary arrangements prior to filing for certification should not cause undue delay. Local governments are not only willing, but eager to invite competition to the incumbent cable operator. Thus, LECs should not have difficulty in securing the necessary permissions, as long as they are willing to negotiate fairly and in good faith.[104]

By the same token, any FCC approval of an OVS certification should be made expressly subject to the applicant's obtaining and maintaining all necessary local approvals. Such a condition is directly analogous to the approach the Commission has taken by imposing conditions on its consent to CARS license transfers by cable operators.[105]

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[104] It may be noted in this regard that Ameritech has already obtained twelve local cable franchises. Communications Daily, March 27, 1996, at 6.

[105] See, e.g., Letter to Jill Abeshouse Stern, 4 F.C.C. Rcd 5061 (1989).

### E. The Commission's rules should recognize that disputes regarding an OVS's right to be in the local public rights-of-way cannot be resolved by the Commission, but only by the courts.

New section 653(a)(2) gives the Commission authority to resolve disputes "under this section." A dispute over an OVS operator's local right-of-way authority, however, would not arise under § 653. Rather, such a dispute would be arise from more fundamental constitutional issues regarding local communities' property interests. Thus, the Act gives the FCC no jurisdiction to resolve such disputes.

Moreover, the FCC has no expertise — or fact-finding capacity — to resolve disputes concerning the conditions under which an OVS operator should be permitted to use the local rights-of-way, which will vary depending on local circumstances and local law. It will simplify matters if any such claims are excluded from Commission responsibility at the outset. Thus, in bringing any OVS dispute to the Commission, the petitioner should be required to certify that the dispute does not involve a local right-of-way controversy.[106] Parties may pursue right-of-way issues simultaneously, if necessary, in court.

## VI. CONCLUSION

OVS is intended to be distinctively different from cable. It is not intended to allow an OVS operator to be a cable operator in disguise, subject to different regulatory

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[106] See NPRM, ¶ 72 (seeking ways to simplify dispute resolution).

requirements than its cable operator competitor. The market will determine whether the OVS or the cable operator model is more feasible. If the Commission were to give OVS special regulatory advantages over cable, this would substitute federal planning for the free market. Accordingly, the flexibility of an OVS operator must be bounded by the requirements of the statute and the policy objectives of the OVS provision.

Based on the foregoing, the attachments that should be required for every OVS certification filing must, at a minimum, include the following.

- Authorization from all affected state or local authorities to use the public rights-of-way in each affected area.
- Certification from all affected local governments that the proposed OVS will fulfill PEG obligations no less than those of any incumbent cable operator in each jurisdiction, either through directly matching such obligations or through a negotiated agreement with each affected local government.
- All necessary amendments to the LEC's Cost Allocation Manual and the date such amendments were filed with the Commission.[107]

If the Commission cannot clearly determine on the face of each certification that it is accompanied by all the necessary attachments, the certification must be rejected. Only such a clear "checklist" approach will permit the Commission to verify

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[107] See NPRM ¶ 70.

that the certification meets minimal statutory requirements within the required ten-day period.

Respectfully submitted,

THE NATIONAL LEAGUE OF CITIES; THE UNITED STATES CONFERENCE OF MAYORS; THE NATIONAL ASSOCIATION OF COUNTIES; THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS; MONTGOMERY COUNTY, MARYLAND; THE CITY OF LOS ANGELES, CALIFORNIA; THE CITY OF CHILLICOTHE, OHIO; THE CITY OF DEARBORN, MICHIGAN; THE CITY OF DUBUQUE, IOWA; THE CITY OF ST. LOUIS, MISSOURI; THE CITY OF SANTA CLARA, CALIFORNIA; AND THE CITY OF TALLAHASSEE, FLORIDA

By

Nicholas P. Miller
Tillman L. Lay
Frederick E. Ellrod III
Miller, Canfield, Paddock and Stone, P.L.C
1225 19th Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 785-0600

Their Attorneys

April 1, 1996

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## APPENDIX

A. In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Comments of the United States Conference of Mayors; the National Association of Counties; the City of Alexandria, Virginia; the Alliance for Communications Democracy; Anne Arundel County, Maryland; the City of Baltimore, Maryland; Baltimore County, Maryland; the City of Dallas, Texas; Howard County, Maryland; the City of Indianapolis, Indiana; the City of Los Angeles, California; Manatee County, Florida; Montgomery County, Maryland; Prince George's County, Maryland; and the City of Santa Clara, California, on the Fourth Further Notice of Proposed Rulemaking (March 21, 1995)

B. In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Reply Comments of the United States Conference of Mayors; the National Association of Counties; the City of Alexandria, Virginia; the Alliance for Communications Democracy; Anne Arundel County, Maryland; the City of Baltimore, Maryland; Baltimore County, Maryland; the City of Dallas, Texas; Howard County, Maryland; the City of Indianapolis, Indiana; the City of Los Angeles, California; Manatee County, Florida; Montgomery County, Maryland; Prince George's County, Maryland; and the City of Santa Clara, California, on the Fourth Further Notice of Proposed Rulemaking (April 11, 1995)

WAFS1\44189.5\104257-00010

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of<br>TELEPHONE COMPANY-<br>CABLE TELEVISION<br>Cross-Ownership Rules,<br>Sections 63.54 - 63.58 | )<br>)<br>)<br>)<br>) | CC Docket No. 87-266 |

To: The Commission

**COMMENTS OF THE UNITED STATES CONFERENCE OF MAYORS; THE NATIONAL ASSOCIATION OF COUNTIES; THE CITY OF ALEXANDRIA, VIRGINIA; THE ALLIANCE FOR COMMUNICATIONS DEMOCRACY; ANNE ARUNDEL COUNTY, MARYLAND; THE CITY OF BALTIMORE, MARYLAND; BALTIMORE COUNTY, MARYLAND; THE CITY OF DALLAS, TEXAS; HOWARD COUNTY, MARYLAND; THE CITY OF INDIANAPOLIS, INDIANA; THE CITY OF LOS ANGELES, CALIFORNIA; MANATEE COUNTY, FLORIDA; MONTGOMERY COUNTY, MARYLAND; PRINCE GEORGE'S COUNTY, MARYLAND; AND THE CITY OF SANTA CLARA, CALIFORNIA, ON THE FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING**

Nicholas P. Miller
Tillman L. Lay
Frederick E. Ellrod III

MILLER, CANFIELD, PADDOCK AND STONE
1225 19th Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 785-0600

Their Attorneys

March 21, 1995

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Tillman L. Lay
Frederick E. Ellrod III

MILLER, CANFIELD, PADDOCK AND STONE
1225 19th Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 785-0600

Their Attorneys

March 21, 1995

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## SUMMARY

Video dialtone operators that program any part of their systems, either themselves or through an affiliate, ("self-programming" video dialtone operators) are "cable operators" subject to the local franchise requirement of the Cable Act. This requirement is no mere technicality, but is based on sound policy.

Competition. The public interest is best served by fair competition. Local communities welcome the increased competition that would result from multiple wireline video providers. Yet, in the rare instances where even the possibility of competition has emerged, franchising authorities have been thwarted by incumbent operators seeking to preserve their monopolies or by supposed competitors seeking preferential treatment.

The Coalition hopes that the entry of local exchange telephone companies (LECs) into the video delivery market will generate true competition. Competition would not be served, however, by allowing a self-programming video dialtone provider to enter and compete without requiring it to be subject to the same franchising process as the incumbent cable operator. Such an unlevel playing field would create market distortion and would force local governments to subsidize video dialtone operators.

The Coalition believes it would be unwise for the Commission to try to compel LECs to become video dialtone providers rather than cable operators. Similarly, Coalition members have serious reservations about allowing LECs to acquire cable systems in

their telephone service areas, at least in any market where there is any possibility at all of head-to-head competition.

Fair Compensation. Local communities have a right to charge a fair price for the use of the public rights-of-way. Paying fair compensation does not inhibit competition; rather, it puts competitors on even terms. Moreover, the enormous growth and success of cable operators over the past twenty years proves that paying fair compensation for use of local rights-of-way in no way inhibits the rapid development of local broadband networks.

Allowing self-programming video dialtone operators to be excused from their clear obligations under the Cable Act would constitute a taking of local communities' property -- the public rights-of-way -- imposing an unfunded mandate on local governments to subsidize the Commission's abstract national vision of the information highway. Such a taking would require the federal government to pay fair compensation to each and every community across the nation.

The value of the public rights-of-way to local communities is secured through cable franchising, including both monetary and in-kind elements. In addition to franchise fees, (as much as $12 million per year for a single city), such benefits commonly include service to schools and public institutions; public, educational, and governmental ("PEG") access channels and funding; studio space; institutional networks linking municipal offices, schools, libraries, hospitals and industry; and coverage of local government and local events.

LECs have argued that, since they already make use of local rights-of-way to provide local telephone service, they need no additional authority to build and operate video dialtone systems. But that argument rests on a fundamental misunderstanding of the scope of the grants LECs have received. To allow LECs to unilaterally expand the scope and value of these grants far beyond their original intent would be a taking of local communities' property.

Local Needs and Interests. The hallmark of the federal system in the United States is the recognition that some government functions must be addressed at the national level, while others involve problems and issues that differ from state to state and from city to city. A "one size fits all" blanket judgment from Washington cannot possibly deal adequately with all such needs and interests.

Local governments are immediately accountable to local citizens if they fail to serve their citizens' needs: those same citizens can and will vote locally elected officials out of office. The Commission, on the other hand, has no direct connection with or accountability to local citizens. It therefore should not attempt to usurp the role of local authorities by dictating the terms and conditions under which private businesses may use each community's rights-of-way.

Local franchising is already building the information infrastructure the Commission wishes to foster, in ways appropriate to each community, and far more effectively than

federal or state regulation has done to date. The franchising process, for example, has yielded far broader deployment of communications infrastructure in schools than LECs have deployed. Through PEG access requirements, local governments negotiate for publicly available facilities and assistance for programming -- "video phone booths" -- for those not well-heeled enough to obtain capacity commercially. Similarly, construction and service requirements in franchise agreements have effectively dealt with "redlining" of lower-income neighborhoods, tailored to the differing needs and demographics of each community.

Cable Act Franchising. Self-programming video dialtone operators are legally required to obtain local franchises. This requirement reflects the judgment of Congress that any person providing both the conduit and making programming decisions under the same corporate umbrella is a "cable operator" that is responsive to local needs and interests.

Since a self-programming video dialtone operator would be transmitting video programming to subscribers, it would provide "cable service" within the meaning of the Cable Act. Moreover, the common carrier exception to the definition of "cable system" does apply to a self-programming video dialtone operator's system, because it is "used in the transmission of video programming directly to subscribers." Thus, a self-programming video dialtone operator is a "cable operator" within the meaning of the Cable Act, and requires a local cable franchise.

Both the Commission itself, in earlier decisions, and the Court of Appeals, in its NCTA opinion, agree with this understanding of the Cable Act's requirements. Only the prohibition against self-programming allowed the Commission and the court to reach the conclusion that the franchising requirement of the Cable Act did not apply to pure video dialtone systems. A self-programming video dialtone operator could not fit within that narrow exception.

Affiliated entities are included in the "cable operator" definition. Thus, it would be wholly beside the point for a LEC to argue that its programming subsidiary was just another customer/programmer of the video dialtone system.

The recent court decisions striking down the cross-ownership ban on First Amendment grounds have no effect on the video dialtone analysis. None of the First Amendment decisions addressed at all the local franchise requirement of the Cable Act, 47 U.S.C. § 541(b). Rather, those decisions simply created another way, much like the statutory rural exemption, in which a telephone company may become a cable operator subject to the Cable Act.

To ensure that the requirements of the Cable Act are satisfied, the Commission should include in all § 214 grants the express condition that the applicant must demonstrate, within a specified time after the grant, that it has received all local franchises.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| TELEPHONE COMPANY- | ) | |
| CABLE TELEVISION | ) | CC Docket No. 87-266 |
| Cross-Ownership Rules, | ) | |
| Sections 63.54 - 63.58 | ) | |

**COMMENTS OF THE UNITED STATES CONFERENCE OF MAYORS; THE NATIONAL ASSOCIATION OF COUNTIES; THE CITY OF ALEXANDRIA, VIRGINIA; THE ALLIANCE FOR COMMUNICATIONS DEMOCRACY; ANNE ARUNDEL COUNTY, MARYLAND; THE CITY OF BALTIMORE, MARYLAND; BALTIMORE COUNTY, MARYLAND; THE CITY OF DALLAS, TEXAS; HOWARD COUNTY, MARYLAND; THE CITY OF INDIANAPOLIS, INDIANA; THE CITY OF LOS ANGELES, CALIFORNIA; MANATEE COUNTY, FLORIDA; MONTGOMERY COUNTY, MARYLAND; PRINCE GEORGE'S COUNTY, MARYLAND; AND THE CITY OF SANTA CLARA, CALIFORNIA, ON THE FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING**

To: The Commission

The City of Alexandria, Virginia; the Alliance for Communications Democracy; Anne Arundel County, Maryland; the City Of Baltimore, Maryland; Baltimore County, Maryland; the City of Dallas, Texas; Howard County, Maryland; the City of Indianapolis, Indiana; the City of Los Angeles, California; Manatee County, Florida; Montgomery County, Maryland; Prince George's County, Maryland; the City of Santa Clara, California; the United States Conference of Mayors; and the National Association of Counties (collectively, the "Local Community Coalition" or "Coalition"), by their attorneys, hereby file the following comments in response to the Fourth Further Notice of Proposed Rulemaking

("Fourth FNPRM") in the above-captioned proceeding, released January 20, 1995.

## I. INTRODUCTION

On February 22, 1995, President Bill Clinton and Vice President Albert Gore issued a statement of principles for reinventing federal regulation.[1] Those principles are:

1. Cut obsolete regulations.
2. Reward results, not red tape.
3. Get out of Washington -- create grass-roots partnerships.
4. Negotiate, don't dictate.

The current proceeding offers the Commission an opportunity to put these principles into practice by working with local communities from the grass roots up, rather than dictating a monolithic approach from the top down, and by promoting local processes that produce results, rather than creating new federal regulations in an attempt to address inherently diverse local needs and interests.

Video dialtone was born as an avenue by which local exchange telephone companies ("telcos" or "LECs"), acting as pure common carriers, could enter the video distribution market that they were then forbidden by law to enter as cable operators. This unique status created by the Commission in the interstices of the Cable Communications Policy Act of 1984, as amended ("Cable Act"), bestowed a unique benefit on telephone companies: The Commission ruled that the local franchising requirements of the

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[1] A copy is attached as Appendix C.

federal Cable Act would not apply to a video dialtone operator, because unlike a cable operator, the video dialtone operator was a pure common carrier and played no role in determining what programming the system would carry.[2]

Since the Commission issued the First Report and Order, a number of courts have held as unconstitutional the telco-cable cross-ownership ban that had prevented telcos from providing video programming directly to subscribers in their telephone service areas.[3] The Fourth FNPRM calls for comments on how this change in the law should affect its video dialtone rules: whether a video dialtone operator providing video programming directly to subscribers over its own system (a "self-programming" video dialtone operator) would be subject to the Cable Act; if not, what additional safeguards would be necessary for a self-

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[2]See In re Telephone Company--Cable Television Cross-Ownership Rules, CC Docket No. 87-266, Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, 7 F.C.C. Rcd 300 at ¶¶ 47-52 (1991) ("First Report and Order"), aff'd on reconsideration, 7 FCC Rcd. 5069 (1992), aff'd, National Cable Television Association v. FCC, 33 F.3d 66 (D.C. Cir. 1994) ("NCTA").

[3]Pacific Telesis Group v. U.S., No. CV-93-20915-JW (N.D. Cal. April 15, 1994), aff'd, ___ F.3d ____, 1994 WL 760379, No. 94-16064 (9th Cir. Dec. 30, 1994); U.S. West, Inc. v. U.S., 855 F. Supp. 1184 (W.D. Wash. June 15, 1994), aff'd, ___ F.3d ___, 1994 WL 760379 No. 94-35775 (9th Cir. Dec. 30, 1994); Chesapeake & Potomac Telephone Company of Virginia v. United States, 830 F. Supp. 909, order amended, Order and Amended Final Order, Civ. No. 92-1751-A (E.D. Va. Oct. 7, 1993), aff'd, 42 F.3d 181 (4th Cir. 1994) ("C&P"); United States Telephone Ass'n v. U.S., CA No. 94-1961 (D.D.C. Jan. 27, 1995) ("USTA"); GTE South, Inc. v. U.S., No. 94-1588-A (E.D. Va. Jan. 13, 1995); NYNEX Corp. v. U.S., Civil No. 93-323-P-C (D. Me. Dec. 8, 1994); Ameritech Corp. v. U.S., No. 93 C 6642, 1994 U.S. Dist. LEXIS 15512 (N.D. Ill. Oct. 27, 1994); BellSouth Corp. v. FCC, Case No. CV 93-B-2661-S (N.D. Ala. Sept. 23, 1994).

programming video dialtone operator; under what conditions the Commission should allow LECs to acquire cable systems in their service areas; and whether the Commission could compel LECs to become video dialtone operators rather than cable operators.

The answer to the first of these questions is crucial for the others. Self-programming video dialtone operators are subject to the Cable Act. Thus, the question of what changes the Commission would need to make to its rules if the Cable Act were inapplicable should not arise.[4] Telephone company acquisitions of cable systems in their telephone service territories should not be encouraged because they do not promote competition. Similarly, the Commission should not compel LECs to become video dialtone providers, but instead should permit LECs to enter the market as cable operators if they wish.

Sections II through IV below explain the key policies underlying the Cable Act -- competition, fair compensation, and federalism -- and why those policies apply with equal force to LEC entry into cable. In Section V, these Comments will show that, as a matter of law, a self-programming video dialtone operator is subject to the Cable Act.

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[4]If the Commission concludes that it must reach this issue (and the Coalition believes it should not), the Coalition fully agrees with the comments submitted by the National Association of Telecommunications Officers and Advisors (NATOA) (Mar. 21, 1995) on this point.

## II. LOCAL COMMUNITIES FAVOR FREE COMPETITION IN VIDEO SERVICES.

### A. Local Communities Welcome the Increased Competition That Would Result from Multiple Wireline Video Providers.

Any communications regulatory scheme must be guided by certain fundamental principles of the public interest. The first of these is the competitive free market.

The Coalition believes that, as a general rule, robust competition is the most efficient and effective way to allocate resources and to build the advanced communications systems that will best serve the public. In addition, a free market tends to maximize the freedom of action of individual citizens and groups of citizens. For both these reasons, the public interest is best served by free and fair competition, wherever such competition can be achieved.

The public is not, however, served by unconstrained monopoly markets. While regulation is at best an imperfect substitute for competition, it must continue to be used where, for whatever reason, the marketplace does not yield effective competition. Thus, governments should regulate where necessary and not otherwise.[5]

Local communities wish to encourage active, competitive use of the public resources under their jurisdiction, including the public rights-of-way. Effective use of these resources provides

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[5]As a corollary, discussed below, any necessary regulation should be carried out as much as possible at the level of government closest to citizens, rather than centralized at the federal level.